going through the hands of some officer, there must necessarily be some person who is entitled to receive the payment of such funds.

In view of this determination, it will be unnecessary to specifically answer your question.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2876.

INHERITANCE TAX LAW—METHOD OF TAXATION OF SUCCESSIONS IN CERTAIN WILL DISCUSSED.

Method of taxation of successions in a certain will discussed.

COLUMBUS, OHIO, February 20, 1922.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The Commission in a recent letter encloses an extract from a will and requests the advice of this department as to the method of determining the inheritance tax on that part of the estate of the testator covered thereby. The extract from the will follows:

> "Fifth: I give, devise and bequeath all the rest, residue and remainder of my estate, both real and personal, of which I shall die seized or possessed, or to which I may be entitled at the time of my death, to my executors and trustees named in the twelfth clause of this my will and hereinafter designated as my executors and trustees, and to whoever may be appointed to succeed them; UPON THE TRUST, nevertheless, to invest and reinvest my said estate, from time to time as occasion may require, and to collect the interest and income derived therefrom, and after paying all taxes, assessments, interest charges, and such sums of money as may be necessary to properly preserve and protect and manage my real and personal estate, to pay over the interest and income thereof, at such periods as they shall deem best in equal portions, to my three children, A., D. and M. for their education, maintenance and support, until one of my said children reaches the age of thirty years.
>
> Sixth: When one of my said children shall reach the age of thirty years, I direct my executors and trustees to divide my residuary estate into as many equal parts as I shall have children then living, and to pay over one of such parts to the child so surviving at the age of thirty years for its own use and benefit absolutely and forever.
>
> Seventh: As to the other parts into which my said residuary estate shall be divided, I direct that my said executors and trustees set apart and hold upon trust, as separate trust funds, one of such parts for the benefit of each one of my children as shall not then have reached the age of thirty years, and to pay over the interest and income of said several parts at such periods as they shall deem best to such children, respectively, for their respective education, maintenance and support until they severally attain the age of thirty years.

Eighth: Whenever any such child, referred to in paragraph seventh of this my will, shall reach the age of thirty years, I authorize and direct my said executors and trustees to pay over such part of my said residuary estate so set apart for it, to the child so reaching the age of thirty years, for its own use and benefit forever.

Ninth: If any of my children shall die before reaching the age of thirty years leaving issue, I direct my trustees to pay over to such issue absolutely, share and share alike, the trust fund held by them, for the child so dying, and if no trust fund shall have then been established for such child, then to pay over to such issue absolutely, share and share alike, such portion of my residuary estate as such child would then have been entitled to receive if it had then reached the age of thirty years.

If any of my children shall die before reaching the age of thirty years without issue and after a trust fund shall have been set apart for it, I direct that the trust fund so set apart for such child, shall be apportioned and paid equally to the trust funds held for the survivors, and to those of my children then over thirty years of age, and to the issue of such as may be dead, such issue taking his, her or their parent's share."

The Commission states that A. at the death of the testator was twenty-three years of age, D. eighteen and M. ten, and that the residuary estate is valued at $300,000.

The first problem is to determine the duration of the primary equitable interest or interests upon which A.'s interests in remainder are limited. The trust for income, etc., is, it will be observed, not to last until A. reaches, or if living would reach, the age of thirty years, but "until one of my said children reaches the age of thirty years." It is entirely possible that none of them will ever reach the age of thirty years. In that event, there is but one provision found in the above excerpts from the will for what shall be done. The ninth item provides that "if any of my children shall die before reaching the age of thirty years *leaving issue* * * *, and if no trust fund shall have then been established for such children," which would be the case, as separate trust funds are not to be so established until one of the children arrives at the age of thirty years, then the trustees are "to pay over to such issue absolutely, share and share alike, such portion of my residuary estate as such child would then have been entitled to receive if it had then reached the age of thirty years."

But even this provision does not exhaust the possibilities, for all the children may die before they reach the age of thirty years, leaving no issue. This is not provided for by the last paragraph of the ninth item because that paragraph deals with the following condition:

> "If any of my children shall die before reaching the age of thirty years without issue and after a trust fund shall have been set apart for it" * * *

This is an event that could not happen unless at least one of the children had arrived at the age of thirty years.

Hence, if all three children die without issue before reaching the age of thirty years, intestacy will occur as to the entire residuary estate so far as anything quoted by the Commission in its extracts from the will is concerned.

Now, it is apparent on the face of the will that the three beneficiaries of the prior estate are also the heirs at law of the testator, so that the ultimate beneficial interest may be said to be vested in them as heirs at law, subject to be divested by the happening of any of the other contingencies referred to in the items of the will.

What would happen, for example, if A. the elder, should die before he reaches the age of thirty years? At that time the corpus of the fund is entire and A.'s interest would have been to receive "an equal portion" of the income, which interest terminates by his death. Yet there would still be a chance of D. reaching the age of thirty years. In the meantime what would become of A.'s share of the income which is to be paid over "in equal portions to my three children." What are we to understand to have been the intention of the testator here? Is it that the income shall continue to be divided into three portions during this period, or that the death of A shall empower the trustees to pay the income in equal shares to D. and M.? On the principle which disfavors intestacy, it is believed that the latter construction of the fifth item of the will should be adopted. That being the case A.'s death before he reaches the age of thirty years, without issue, would extinguish his share of the income. Then if D. and M. continue to live until D. reaches the age of thirty, the corpus under the sixth item of the will would be divided into two equal shares.

Repeating the same process of reasoning and applying it to D., it is apparent that M. should she survive until she reaches the age of thirty years, would receive the entire corpus under the sixth item of the will, for that item directs the division of the residuary estate in as many equal parts "as I shall have children then living," and if but one of the children is then living, it is apparent that that child shall receive it all.

If this method of reasoning is permissible then, it would seem that taxation of the successions in this estate at the highest possible rate (the remainders being contingent), would justify the supposition that one of the children will take the entire corpus on ultimate distribution by virtue of the sixth item of the will and the other contingencies which have been mentioned. No other possible takers would fall into a higher rate class. This is true because the fact of intestacy vests the ultimate remainder in the present heirs, so that if all three should die before arriving at the age of thirty years without issue, their devisees, legatees, next of kin or heirs at law would take in their estates and not in the estate of the present testator. This point has been covered by previous opinions.

We have now to consider whether further development of this line of reasoning requires that it be determined which of the three children shall be regarded as succeeding to the entire estate under the sixth item. If D. and M. die soon without issue, and before A. arrives at the age of thirty years, A. would succeed to the entire estate; and he would reach the age of thirty years first, being eldest. The greatest present worth of the future limited estates can therefore be obtained by supposing that A. succeeds, i. e. that he alone survives and arrives at the age of thirty years.

But we still have to consider how to arrive at the assessment of the primary interests. A.'s expectancy of life is such as that he will probably live to be thirty years of age. The same is true of D. and M. respectively. These interests under the fifth item are vested and the other interests are limited upon these interests. It is concluded, therefore, that the primary interests arising under the fifth item are to be assessed to A., D. and M. in equal shares, each of which represents the value of a one-third interest in a fund of $300,000 for a period of seven years. True, the actual right of each of the children is to receive one-third of the net income after payment of taxes, assessments, interest, etc. But this makes no difference in the appraisement of the estate.

We now come to a consideration of the seventh item of the will, and have to inquire whether the expectancies of life of D. and M. require us to assume that they also will reach the age of thirty years. In the opinion of this department a negative

answer must be returned to this question. The first or vested estate upon which the other equitable interests are limited is that defined in the fifth item of the will. The seventh item is wholly contingent. D. and M., for example, do not take under the seventh item unless they are alive when A. reaches the age of thirty years.

Without prolonging the discussion, it is the opinion of this department that the proper present taxation of the successions covered by the items of the will quoted herein is as follows:

A., D. and M. to be taxed respectively on their one-third interest in the income of the whole for a period of seven years, or the exact time intervening between the death of the testator and the date when A. will arrive at the age of thirty; the entire remainder to be presently taxed to the trustees on account of representatives in the one per cent class, subject to adjustment.

One detail remains to be considered. It is conceivable that A. might succeed to the entire remainder; in fact, it is on the assumption that he will so succeed that "we get the highest possible rate" in so far as that depends upon the present value of the remainder. But this assumption carried to the logical extreme would also require the addition of the present value of the remainder to A.'s share of the vested estate, if by so doing a greater amount of tax would be so produced. This, in the opinion of this department, should be done, and although the tax should be separately determined on the contingent interests, yet, the amount payable should be determined by adding the value of A.'s interest in one-third of the income to the value of the present worth of the entire contingent remainder, applying the appropriate rate in the one per cent class of rates to the gross amount so ascertained, and from that result subtracting the tax separately assessed and paid on account of A.'s vested interest.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2877.

COUNTY AUDITOR—NOT AUTHORIZED TO PREPARE CIRCULARS FOR PURPOSE OF INFORMING TAX PAYERS AS TO DISBURSEMENTS OF TAX FUNDS—SUCH EXPENSE NOT PAYABLE FROM COUNTY TREASURY.

A county auditor is not authorized by law to prepare folders or circulars for the purpose of informing tax payers as to the disbursements of tax funds, and the expense of printing such circulars may not be paid from the county treasury.

COLUMBUS, OHIO, February 20, 1922.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Receipt is acknowledged of your recent communication which reads as follows:

> "We are enclosing herewith a printed four-page folder, entitled 'Information for Assessors and Taxpayers.' You are requested to furnish this department with your opinion as to the legality of the payment out of the county treasury of the cost of printing the same."